D.B. CIVIL SPECIAL APPEAL (W) NO.336/2003.
(Gurdev Singh & Ors. Vs. Sheo Karan & Ors.)

Date : 13.04.2005.

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.H.S. Sidhu, for the appellant.
Mr.R.K.Singhal, for the respondents.

This special appeal is directed against the order of the learned Single Judge dated 3rd April, 2002.

The brief facts giving rise to the instant special appeal are that the agriculture land of the appellants as well as the first respondent Sheo Karan are situated in chak No.3-4 NGR. The fields of the respective parties used to get water supply through the outlet situated at stone no.182/217.8. In the year 1991 the first respondent Sheo Karan moved an application before the Executive Engineer, Irrigation Division-I, Hanumangarh Sangam for shifting of the outlet of chak No.3-4 NGR from stone No.182/217.8 to 181/218. The said application was allowed by the Executive Engineer by order dated 30.01.1992 and ordered to shifting of the outlet as prayed. The appeal was dismissed by the order dated 31st July, 1992. The second appeal was preferred by the appellants before the Chief

Engineer. The second appellate authority namely Chief Engineer found that if the outlet is shifted as desired by the first respondent then the agriculturist of the chak will get the less water supply. In view of the finding, the Chief Engineer by order dated 18.05.1994 allowed the appeal and set aside the order of the Executive Engineer. The said order was challenged by way of writ petition before this Court which came to be allowed by the impugned order dated 03.04.2002.

It is contended by the learned counsel that it was not open for the learned Single Judge to interfere with the finding of fact recorded by the Chief Engineer based on technical knowledge. The reliance is placed on a decision of the Division Bench of this Court in Jarnel Singh & Anr. Vs. State of Rajasthan & Ors reported in 1992 RLW (1) 362. It is held therein that the opening, closing, varying and shifting of outlet is part of the establishment system of irrigation. The courts are not to interfere with the decision of the authorities concerned based on expert opinion. On the other hand learned counsel for the respondents reported the judgment of the learned Single Judge. We have carefully gone through the judgment of the learned Single Judge. It is of course true that normally the court would be reluctant to interfere with the matter pertaining to establishment system of irrigation, but this Court will have a

jurisdiction, where the finding on face is erroneous causing serious miscarriage of justice.

In the instant case the arrangement made by the Executive Engineer on the basis of site inspection and technical opinion was confirmed in appeal by the Superintending Engineer. The Chief Engineer in second appeal ought not to have interfered except for the compelling reasons.

The learned Single Judge found that when the water course was shifted after complying with all the procedure and taking into confidence agriculturists of the chaks concerned and technically the outlet was found to be more feasible because after shifting, the water course will be 825 feet shorter and it will have less turns the irrigation in fields will be more effective. There was no reason for the Chief Engineer to disturb the arrangement. The learned Single Judge has given cogent reasons for interfering with the finding of redressal recorded by the Chief Engineer.

On careful consideration of the entire material, we are of the view that the learned Single Judge after taking into all the relevant aspects has rightly arrived at the conclusion that the Chief Engineer did not consider the material on record in right

perspective and wrongly reverse the decision of the Executive Engineer confirmed by the Superintending Engineer.

In our view, no interference is warranted with the order of the learned Single Judge. The special appeal stands dismissed.

(MANAK MOHTA),J. **(N.N.MATHUR),J**

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